

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

LESLIE A. SCHULZ and  
DEWAYNE K. LONG,

Defendants.

**8:13CR347**

**MEMORANDUM AND ORDER**

This matter is before the court on defendant Schulz's objection, [Filing No. 41](#), to the order of the magistrate judge, Filing No. 39 (text order), denying his Motion to Compel "with Clarity the Production of Documents Relied Upon in the Investigation and Indictment of Mr. Schulz," [Filing No. 36](#). The defendants are charged in a ten-count indictment with one count of conspiracy to defraud the United States (hereinafter, "the Government") with respect to claims, in violation of [18 U.S.C. § 286](#); nine counts of filing false claims for tax refunds under [18 U.S.C. § 287](#), and aiding and abetting under [18 U.S.C. § 2](#). [Filing No. 1](#), Indictment.

In his motion to compel, the defendant sought information concerning tax returns and 1099 / OID statements prepared by or for the behalf of six individuals referred to either by name or by coded initials in the Indictment. [Filing No. 36](#). In particular, the defendant sought "all returns and 1099 statements which are at the heart of this case, which may have been filed for or relating to the tax years in which he is accused of filing false claims for tax returns, along with all carry back and carry forward loss years which may have been affected thereby (generally this would include the two prior and three subsequent years)." *Id.*, Motion at 1. The magistrate judge denied the motion "as having been ruled on" in a text order, finding that the issues raised in the motion to compel had been addressed in the

order granting, in part, the defendant's motion to disclose. Filing No. 39, text order. The magistrate judge added that the order had not been appealed and remains in effect. *Id.*

The defendant argues that the magistrate judge ordered the Government to produce the documents and the Government has not produced them. In his earlier motion for disclosure, defendant Schultz sought production of "All tax returns, elections, amendments, corrections, assessments or other correspondence regardless of title or form of transmission filed or transmitted by or on behalf of Mr. Long and the Long clients whose tax returns are the subject of this present case, which were filed in any of the five preceding or three subsequent tax years as measured from the returns prepared by Mr. Schulz." See [Filing No. 20](#), Motion for Disclosure at 2.

The magistrate judge granted the motion with respect to the "nine tax returns listed on page eight of the September 25, 2013 Indictment, finding it obvious that "based upon the allegations in the indictment, the tax returns are critical documents, form the basis of the government's charges, and may well contain exculpatory material," but denied the "remainder of the defendant's motion involving tax returns." [Filing No. 31](#), Order at 2. The magistrate judge also reminded the Government "that in all criminal cases it has a discovery obligation under the Federal Rules of Criminal Procedure and existing case law to make a timely and complete disclosure of certain information." *Id.*

The defendant argues that the Government is obliged to produce the other documents on which it relies, i.e., the status of any given return, the relevant O.I.D. / 1099 statements, the returns for the carry back and carry forward periods, and the taxpayer transcripts, to comply with its obligations of disclosure under the Federal Rules of Criminal Procedure and the Constitution. The Government has not filed a response to defendant Schultz's objection.

Pursuant to 28 U.S.C. § 636(b)(1)(A), the court has conducted a *de novo* determination of those portions of the magistrate judge's order to which the defendant objects. *United States v. Lothridge*, 324 F. 3d 599, 600-01 (8th Cir. 2003). The court finds the magistrate judge's earlier orders could have been subject to differing interpretations. In the context of the case, it could be interpreted to include the documentation underlying the tax returns at issue. Conversely, it could be interpreted as limited to the returns at issue. Whatever the magistrate judge's order requires, the court finds the documents the defendant seeks could be relevant and exculpatory and would fall within the purview of the Government's obligations under the Rules. The defendant has shown that the documents are necessary to his defense.

Accordingly, the court finds the defendant's objections to the order of the magistrate judge should be sustained, the magistrate judge's denial of the motion to compel should be overruled, and the Government should be ordered to produce the documents.

IT IS ORDERED:

1. Defendant Schulz's objection ([Filing No. 41](#)) is sustained.
2. The magistrate judge's order (Filing No. 39) is vacated.
3. Defendant Schultz's motion to compel ([Filing No. 36](#)) is granted.
4. The Government shall produce the documents within two weeks of the date of this order.

DATED this 12th day of February, 2014.

BY THE COURT:

s/ Joseph F. Bataillon  
United States District Judge